But we are satisfied that the State will urge the propriety of its admission on a different ground. It will urge that on account of the peculiar manner of Barnet's death, his relations with the accused, and other connecting circumstances, a sufficient foundation was laid for the introduction of the so-called Barnet evidence; that it was simply a decision by the Court on a preliminary question of fact as to whether this evidence should properly go to the jury. In such a case it does not devolve on the State to prove beyond all doubt and question that the defendant has committed a prior crime. It yet remains the duty of the jury to weigh the evidence for what it is worth, and they must still be satisfied, beyond a reasonable doubt, as to the guilt of the accused as charged in the indictment.

As to the relation the particular facts in the Molineux case bear to these principles of the law of evidence, we, of course, do not presume to state. We may, however, be assured that the entire matter is in safe custody and confidently expect a careful and luminous exposition of the law on the subject.

STATE GAME LAWS—IMPORTATION UNDER.

The close check that the Federal Commerce Clause puts upon State legislation is again illustrated by two recent cases involving the right to make possession of game unlawful during the close season. A law of New York is declared unconstitutional so far as it applies to imported fish. *People* v. *Buffalo Fish Co.*, 58 N. E. 35. This overrules *Phelps* v. *Racey*, 60 N.Y. 10, where, under a similar law, a defense that the game had been imported from Illinois and Minnesota was held unavailing, it would seem because Congress had not legislated thereon. This latter is no longer law. The right to regulate foreign and inter-State commerce is given to Congress and imposes upon the States the duty not to interfere. So a State cannot prevent the importation of liquor. *Leisz* v. *Hardin*, 135 U. S. 100. The same doctrine was again applied in *Minnesota* v. *Barbour*, 136 U. S. 313, where it was held incompetent for a State to exclude beef killed outside of the State, by compelling an inspection twenty-four hours before the killing. The latest pronouncement is that a State cannot exclude a healthy product like oleomargarine. *Schollenberger* v. *Pennsylvania*, 171 U.S. 1. It would seem, therefore, that if the States are powerless to prohibit the importation of liquor and oleomargarine, which they deem injurious to the public welfare, or to provide inspec-

tion laws considered necessary as a health regulation, they are equally helpless to protect their own game if importation, by making evasion of their laws easy, practically destroys their effect. So it was held *in re Davenport*, 103 Fed. Rep. 540 (Cir. Ct. Wash.).

The Commerce Clause prohibits the States from putting any direct burden upon foreign or inter-State commerce. Under it a State can, in the exercise of its police power, interfere with commerce indirectly, provided it acts reasonably and in good faith. It is free to pass laws facilitating such commerce so long as Congress remains from the field. But the line of the legitimate exercise of its police power, with its indirect effect upon commerce other than internal, is separated but by a hair's breadth from the power that is Congress' alone. We do not think the argument of the three dissenting judges in favor of the State's right to legislate far enough to make its game laws effectual, can withstand the authority of *Leisz* v. *Hardin*, 135 U. S. 100, which is directly against this power, and which it is certainly a defect in the opinion not to mention. Of itself, the consumption of imported game tends to preserve the local supply. If it is prevented merely because its remote effect may be to render the evasion of game laws easier, it seems to make the innocent suffer for the guilty, and may be objectionable as an unreasonable restraint upon commerce. The people of one State have a right to buy wholesome products of the people of another, and State legislation cannot restrict this without good cause. *Minnesota* v. *Barbour*, 136 U. S. 313.

At all events, it is too late now to question the wisdom or unwisdom of the rule laid down in *Leisz* v. *Hardin*, *supra*. It is certainly an odd result worked out under the very same Commerce Clause, that a State which can prohibit absolutely the exportation of its game (*Geer* v. *Connecticut*, 161 U. S. 519) should be powerless to restrain its importation, which is equally effective, it is contended, to render nugatory the object desired.

EXTRADITION TO CUBA.

In re Neely, 103 Fed. Rep. 626-31, is the first case, so far as we know, that recognizes our protectorate over Cuba as constitutional. It arose out of the notorious postal frauds. Neely, the embezzler, fled to the United States. To meet this very exigency, Congress passed in June, 1900, an act allowing